

1 UNITED STATES DISTRICT COURT
 2 WESTERN DISTRICT OF NORTH CAROLINA

FILED
Asheville, NC

Sep 21 2022

U.S. District Court
Western District of N.C.

4 COOPER STRICKLAND,)
)
 5 Plaintiff) Civil Action
)
 6) No. 20-00066-WGY
 7 vs.)
)
 8 UNITED STATES OF AMERICA,)
 Defendant)

9
 10 BEFORE: JUDGE WILLIAM G. YOUNG

11
 12 MOTION FOR PRELIMINARY INJUNCTION

13 CONDUCTED BY ZOOM

14
 15 John Joseph Moakley United States Courthouse
 16 Courtroom No. 10
 17 1 Courthouse Way
 Boston, MA 02210

18
 19 September 8, 2022
 20 10:09 a.m.

21
 22
 23 Valerie A. O'Hara, FCRR, RPR
 24 Official Court Reporter
 John Joseph Moakley United States Courthouse
 25 1 Courthouse Way
 Boston, MA 02210
 E-mail: vaohara@gmail.com

1 APPEARANCES VIA ZOOM:

2 For The Plaintiff:

3 COOPER STRICKLAND, pro se;

4 For the Defendant:

5 U.S. Department of Justice, Civil Division, by
6 JOSH KOLSKY, ASSISTANT UNITED STATES ATTORNEY, Civil Division,
1100 L Street NW, Washington, D.C. 20005.

THE CLERK: Now hearing Civil Matter 20-00066,
Strickland vs. the United States, et al.

THE COURT: Good morning, counsel. This is a hearing on the plaintiff's motion for a preliminary injunction. The hearing is held on our Zoom platform. Our host for the hearing is courtroom deputy clerk, Jennifer Gaudet, the proceedings are taken down by official court reporter, Valerie O'Hara, and I have law clerks on the line.

These proceedings are open to the public. If any members of the public are present, you are, of course, welcome, but I must remind you that the rules of court remain in full force and effect, and so you must keep your microphone muted and that there is no rebroadcasts, taping, streaming, screen shots, or other transcription of these proceedings.

With that said, would counsel identify themselves and who they represent starting with the plaintiff.

MR. STRICKLAND: Yes, good morning, your Honor,
Cooper Strickland for the plaintiff.

THE COURT: Good morning, Mr. Strickland.

And for the defense?

MR. KOLSKY: Yes, good morning, your Honor,
Joshua Kolsky on behalf of the defendants.

THE COURT: And, Mr. Kolsky, good morning to you.

All right. After due consideration, the motion for preliminary

1 injunction is pursuant to the Federal Rules of Civil Procedure
2 65 combined with trial on the merits, so, Mr. Strickland, when
3 really do you want to go to trial here now? I understand why
4 you want a prompt resolution, and I'm prepared to give it to
5 you, but we're going to have to have a trial to get there, so
6 when?

7 MR. STRICKLAND: I believe we have one scheduled for
8 September 2023. Everybody agreed to that at the status
9 conference.

10:10AM 10 THE COURT: Everybody did, yes, but you're saying --
11 you see, I'm prepared to revisit that and give you a much more
12 rapid trial subject to what Mr. Kolsky says. That is what we
13 agreed.

14 What I just did was collapse further consideration of
15 the preliminary injunction with trial on the merits, so I'm
16 asking you now since I'm not giving preliminary injunction
17 today and I'm not deciding it on affidavits, I want a trial, so
18 when is the earliest we can get to a trial that gets you the
19 relief that you seek?

10:11AM 20 MR. STRICKLAND: You know, partly this is a very
21 difficult question to answer because it's just me here right
22 now. The other counsel for the plaintiff have not been
23 admitted, and I'm going to try the best I can, but I understand
24 that that's your practice that you use, you collapse it down to
25 the merits. I would have appreciated some notice of that so we

1 could have discussed this with Professor Gersen and try to
2 figure out an answer for that. I don't know. To be honest,
3 does the Court still intend to hold a summary judgment hearing
4 this month?

5 THE COURT: Well, I really hoped we could get to a
6 prompt trial, but...

7 MR. STRICKLAND: I understand that, but I don't want
8 to prejudice my client if discovery is -- if six months of
9 discovery is required, as the defendant said during the status
10:12AM 10 conference, I can't commit to something that would prejudice
11 her rights just because you want to expedite the trial on the
12 merits.

13 THE COURT: Wait a minute. This is your case.

14 MR. STRICKLAND: I understand.

15 THE COURT: You've asked to expedite a resolution.
16 That's what Mr. Kolsky tells me. I'm trying to accommodate
17 you.

18 MR. STRICKLAND: I haven't asked that, we asked for a
19 preliminary injunction.

10:13AM 20 THE COURT: I really am. You know, once the decision
21 of the Fourth Circuit came down, we all knew what the
22 parameters of this case are, there's no surprise here. The
23 Fourth Circuit's mandate tells us the work we have to do, and
24 nothing has changed. Candidly, I was surprised when you said
25 that you didn't want the trial until next September and the

1 reason was I fully understood that prospective relief is all
2 that I am permitted to award here.

3 Now you've changed course and said, well, now we want
4 it in essence right away. Well, I'm not going to do it on
5 affidavits, I want evidence.

6 MR. STRICKLAND: Yes.

7 THE COURT: But, believe me, my mind is really open to
8 receiving that evidence. Now --

9 MR. STRICKLAND: Can I just --

10:14AM 10 THE COURT: Wait a minute. You say you would have
11 liked some notice. All you have to do is check with the clerk
12 because it's my standard practice. If you had some issue about
13 it, you could have raised it prior to this hearing. I'm not
14 going to pin you to a date, but that's how we're going to
15 proceed. Now maybe the way to handle this -- but I do want to
16 hear Mr. Kolsky -- is for you -- Professor Gersen I'm sure can
17 be admitted. You contemplate she's going to be with you in
18 trying the case?

19 MR. STRICKLAND: We've had two other attorneys.

10:15AM 20 THE COURT: All right, fine.

21 MR. STRICKLAND: No, it's not actually fine because we
22 filed Professor Gerson's back in June, and we have repeatedly
23 brought it up even within the context of this preliminary
24 injunction hearing, and she's never been formally admitted on
25 the docket, the same with Phil as well. We've hamstrung right

1 now because these issues have been going on for weeks, if not
2 months, trying to get counsel admitted here.

3 THE COURT: Let's take care of it. They're all
4 admitted so long as they comply with the local rules of the
5 Western District of North Carolina. If they've submitted the
6 materials. I see your problem that I have to actually act,
7 they're admitted, so now they're admitted.

8 MR. STRICKLAND: I brought this up at the July status
9 conference, and you said the same thing, and it never happened,
10:15AM 10 and since that point in time, and we've informed the Court of
11 this in filings that Ms. Gersen has not --

12 THE COURT: I will follow it up, I will follow it up.
13 Now, Mr. Strickland, maybe we ought to do this. I've made my
14 order. I do want to hear from Mr. Kolsky, but why don't you
15 and he confer, and why don't I set it down for a further
16 hearing to schedule a prompt trial, what would you say a week,
17 two weeks?

18 MR. STRICKLAND: No, I cannot agree to that. More
19 importantly, I think we're entitled to the preliminary
10:16AM 20 injunction now. What it sounds like is that you're going to
21 set off a decision of that, and that's not allowed under Fourth
22 Circuit precedent. You can do not an indefinite suspension of
23 this. We are entitled to a ruling on the preliminary
24 injunction now.

25 THE COURT: Mr. Strickland, I haven't done any

1 indefinite suspension. If you want me to put you to trial
2 without telling you, there won't be any indefinite suspension,
3 I'll set a prompt trial date. Let me turn to Mr. Kolsky.

4 MR. STRICKLAND: How do we get our discovery in this
5 context?

6 THE COURT: You know, this idea about discovery. You
7 know, you have subpoenas here. There isn't a constitutional
8 right to discovery. This is an important case. It requires
9 careful attention. You say you want prompt action. I'll give
10 it to you.

10:17AM

11 Now, Mr. Kolsky, from your perspective, understanding
12 my practice, when can you be ready to try this case?

13 MR. KOLSKY: Your Honor, we would prefer to stick with
14 the September 2023 trial date.

15 THE COURT: He wants much faster action, and actually
16 I don't see a need to wait that long.

17 MR. STRICKLAND: I don't, I don't. I don't want it to
18 be framed that way. That's not what I said.

19 THE COURT: Well, I will tell you your proposal for a
20 preliminary injunction is woefully inadequate because, for
21 example, we don't know anything about the damages here. Let's
22 say there was, just for the purpose of discussion, a reasonable
23 likelihood of success on the merits. I wouldn't know how to
24 frame an order, and there has been none of these things have
25 been subject to cross-examination. I'm entitled to actually

10:18AM

1 take evidence.

2 MR. STRICKLAND: Yes.

3 THE COURT: And I propose to take it and I propose
4 then to make a proper ruling on a proper evidentiary record.
5 Now, you can't tell me that I can't get to the merits. If you
6 want to wait till September, then I will wait, and that's when
7 I will determine the matter, but that's not indefinite. That's
8 what you're telling me. I'm telling you the requirements for
9 equitable relief here are an evidentiary hearing beyond
10 affidavits, however we frame it. Now let me put it that way,
11 if you want to call it a preliminary injunction, when do you
12 want this evidentiary hearing?

13 MR. STRICKLAND: This is such a difficult position for
14 me to be in. Last week I contacted your courtroom deputy and
15 asked whether this was an evidentiary hearing or an oral
16 argument. She told me it was an oral argument. We, therefore,
17 filed a notice on Friday waiving the oral argument, reiterating
18 yet again that we did not believe an evidentiary hearing was
19 necessary but if the court disagreed, to provide us notice of
20 that so we could provide a position. I feel I've been brought
21 in here and sand bagged with this a little bit.

22 THE COURT: Well, I'm sorry you feel that way. I
23 really don't accept that. The truth is I'm trying very hard to
24 accommodate you and safeguard the rights of all parties.

25 MR. STRICKLAND: See, but what's curious to me is at

1 the status conference in July, you were so reluctant to do
2 anything with summary judgment motion. I think you said you
3 didn't believe it would go anywhere, and that resulted in this
4 situation where if it's not going to go anywhere, it sounds
5 like we need discovery.

6 Everybody, even the defendants, Josh Kolsky just
7 confirmed it, he prefers the September 2023 trial date. It
8 sounds like you're trying to do everybody out of their
9 discovery. The preliminary injunction should be in place to
10:20AM 10 allow the parties to perform discovery and get to the trial
11 date in September 2023.

12 THE COURT: Well, Mr. Strickland, here's my problem.
13 The procedural posture of this case is that the government
14 defendants filed a motion to dismiss on which I erroneously
15 allowed. That set you up for an appeal, and the Fourth Circuit
16 has now pointed out the manner in which the motion to dismiss
17 is -- was improperly allowed, so now you tell me for the first
18 time that you want a preliminary injunction.

19 You know as soon as that opinion came down and they
10:21AM 20 said you could only get prospective relief, you knew that you
21 were going to have to some proceeding on the merits to get to a
22 resolution.

23 Now, if you're saying to me that you are dependent on
24 your motion for summary judgment, I'll set that down for
25 hearings subject to hearing from Mr. Kolsky, I'll set that down

1 for hearing.

2 MR. STRICKLAND: You already have.

3 THE COURT: And we'll see where we stand on that.

4 MR. STRICKLAND: You already have. You said it was
5 going to occur this month, the end of this month, the last two
6 weeks of this month, you just haven't set a specific date yet.
7 Even the defendants here have linked up preliminary injunction
8 with the summary judgment.

9 THE COURT: All right. Let's accommodate you on that.
10:22AM 10 I'll turn to the clerk. When can we hear the motion for
11 summary judgment?

12 THE CLERK: Judge, we can hear that on Wednesday,
13 September 28th at 2 p.m.

14 THE COURT: How does that suit, Mr. Strickland?

15 MR. STRICKLAND: Give me a moment to look at my
16 calendar. That appears to work for me, but, again, I can't
17 state for Professor Gersen.

18 THE COURT: Well, we have to proceed, and I will look
19 into assuring that she is admitted.

10:23AM 20 MR. STRICKLAND: Can you look into the bill of costs
21 as well whenever you do that because there seems to be some
22 back and forth between chambers and the clerk's office in terms
23 of bill of costs?

24 THE COURT: I do not accept that, but I said I will
25 look into it. I will. Mr. Kolsky, how does that work?

1 MR. KOLSKY: September 28th works for me, thank you,
2 your Honor.

3 THE COURT: All right. It's set down for hearing on
4 that date at that time. My order collapsing preliminary
5 injunction with trial on the merits stand. We'll see where we
6 are after we've heard the motion for summary judgment, and
7 we'll further discuss the matter at that time. Is there
8 anything else we should do today?

9 MR. KOLSKY: No, your Honor, thank you.

10:24AM 10 THE COURT: Mr. Strickland, anything else?

11 MR. STRICKLAND: Just that I'm extremely uncomfortable
12 with what just happened. Again, I think this is so unfair on
13 so many levels because we have not had all counsel admitted
14 into this case. It seems to be sometimes you say that there's
15 no need for discovery, and other times you indicate that there
16 are.

17 To me, I agree there are no disputes of fact here, but
18 I don't understand why you have not acted on the summary
19 judgment motions before now. That was part of, to be honest,
10:24AM 20 what triggered the preliminary injunction is when you came into
21 the status conference in July and said it wasn't going
22 anywhere, and I kind of had to keep pushing and even for you to
23 consider it and put it on the calendar, and then you reset all
24 the deadlines after the mandate voided your dismissal order,
25 and I don't understand how any of this has happened. It seems

1 like this case has become so procedurally complicated and
2 messed up in so many ways.

3 THE COURT: No one wants to make it uncomplicated,
4 Mr. Strickland, more than I. I must say I don't accept your
5 characterization of events, but be that as it may, we will hear
6 the motion for summary judgment on the 28th. We will further
7 discuss the scheduling of the case at that time, and I will
8 assure myself that your proposed associates and
9 Professor Gersen are admitted assuming that they have submitted
10:26AM 10 the materials that the Western District of North Carolina
11 requires.

12 MR. STRICKLAND: Those have been in the docket for
13 months.

14 THE COURT: All right. I don't question it. I will
15 check into it.

16 Anything else we should do today?

17 MR. STRICKLAND: I need to consult with other counsel
18 and talk about this evidentiary hearing. Is there some way to
19 report back to the court what that discussion -- I mean, we may
10:26AM 20 be open to the evidentiary hearing, I don't know, I cannot
21 answer for everyone at that time.

22 THE COURT: I said we'd discuss it on the 28th. You
23 want to report back earlier than that?

24 MR. STRICKLAND: I think we want to report back
25 earlier than that. I want to keep all options open. I don't

1 want to be bound by anything. I can't bind our side.

2 THE COURT: A Judge's job is to make orders to move
3 the case along, so I'll make orders.

4 MR. STRICKLAND: And I agree with that.

5 For example --

6 THE COURT: You may feel free to with notice to the
7 other side, and I suggest that you do well to talk with
8 Mr. Kolsky, but once you've talked with your colleagues, feel
9 free to make such written report to the court as you may wish.
10:27AM 10 Believe me, I will read it the day it is filed.

11 For now, further hearing, the motion for summary
12 judgment and a further hearing on scheduling anyway is
13 scheduled anyway for the 28th. All right, we'll recess.

14 (Whereupon, the hearing was adjourned at 10:26 a.m.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT)

WESTERN DISTRICT OF NORTH CAROLINA)

I do hereby certify that the foregoing transcript,
Pages 1 through 15 inclusive, was recorded by me
stenographically at the time and place aforesaid in Civil
Action No. 20-00066-WGY, COOPER STRICKLAND vs. UNITED STATES
OF AMERICA and thereafter by me reduced to typewriting and is a
true and accurate record of the proceedings.

Dated September 16, 2022.

s/s Valerie A. O'Hara

VALERIE A. O'HARA

OFFICIAL COURT REPORTER